



## Office of the Attorney General

State of Texas

December 19, 1996

DAN MORALES

ATTORNEY GENERAL

Mr. John Steiner  
Division Chief  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-1088

OR96-2449

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102560.

The City of Austin (the "city") received a request for a variety of information regarding proposals for the city's airport shuttle service. You note that parts of the proposals are marked by the bidders, W.M. Transit Ventures d/b/a SuperShuttle ("SuperShuttle") and the joint venture of Star Shuttle ("Star Shuttle") and Austin Cab Company, as proprietary information.<sup>1</sup> You ask whether the information marked as proprietary by the bidders is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.305, we notified Star Shuttle and SuperShuttle of the request for information and of their opportunity to claim that the information at issue is excepted from disclosure. Star Shuttle responded, summarily arguing that "all of the information contained in our proposal is privileged and confidential and contains trade secrets," and alternatively listing which specific items in the proposal should not be disclosed. However, SuperShuttle did not respond to our notification pursuant to section 552.305.

Section 552.110 excepts from disclosure trade secrets and commercial or financial information obtained from a person and confidential by statute or judicial decision. This office cannot conclude that information is a trade secret unless the governmental body or

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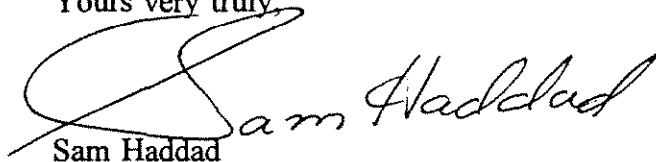
<sup>1</sup>We note that information is not confidential under the Open Records Act simply because the party submitting it to a governmental body anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987).

company has provided evidence of the factors necessary to establish a trade secret claim. Open Records Decision No. 402 (1983). Facts sufficient to show the applicability of these factors have not been provided. See Open Records Decision No. 363 (1983) (third party duty to establish how and why exception protects particular information). Additionally, to establish that the public release of information is likely to cause substantial competitive harm, a business must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. See Open Records Decision No. 639 (1996) at 4 (citing *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397 (5th Cir.), cert. denied, 471 U.S. 1137 (1985)). Consequently, neither the city nor Star Shuttle has demonstrated how section 552.110 may apply to the information at issue, and, therefore, we have no basis upon which to pronounce the information protected by section 552.110. Open Records Decision No. 363 (1983). Thus, the submitted information may not be withheld pursuant to section 552.110. See generally Open Records Decision Nos. 541 (1990) (contracts between governmental bodies and third parties are generally considered public information), 514 (1988), 175 (1977) at 4 (resumes listing education and experience of employees do not fall within trade secret exception to Open Records Act), 125 (1976).

We next address whether section 552.101 requires the city to withhold any of the submitted information. Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. However, we are not aware of any law that would render the information at issue confidential. Thus, the city must release the information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over a large, stylized, looping flourish.

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/ch

Ref.: ID# 102560

Enclosures: Submitted documents

cc: Mr. Ken Martin, Editor  
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(w/o enclosures)

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